

shall request the information and provide the other party or parties an opportunity to respond to that information. The Director, OEEOC, shall have 60 days from receipt of the additional information or responses to such additional information, whichever is later, to make the decision. The Director, OEEOC, shall transmit his or her decision in writing to the parties. The decision shall set forth the findings, remedial actions, and reasons for the decision.

(2) Where a request for a hearing has been made, the administrative judge shall issue an initial decision, in writing, based on the hearing record, composed of the proposed findings of fact, conclusions of law, and remedies, to the parties and to the Director, OEEOC, within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Director, OEEOC. The decision of the administrative judge shall be deemed to be the final decision of the Agency after 30 days, unless a party files a petition for review with the Director, OEEOC, pursuant to 13 CFR 134.228(a) or the Director, OEEOC, issues an order stating his or her decision to review the initial decision, pursuant to 13 CFR 134.228(a). *See* 13 CFR 134.227(b).

(3) Where a petition for review is filed or a review is ordered by the Director, OEEOC, the Director, OEEOC, shall make the final decision of the Agency based on information in the complaint file, the letter of findings, the hearing record, the initial decision, the petition for review, and any responses to the petition or order. The decision shall be made within 60 days of receipt of the petition for review, the order, or any responses to such petition or order, whichever is later. If the Director, OEEOC, determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Director, OEEOC, shall have 60 days from receipt of the additional information or responses to such additional information, whichever is later, to make the

decision. The Director, OEEOC, shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, recommended remedial actions, and reasons for the decision. The decision shall adopt, reject, or modify the initial decision of the administrative judge. If the decision is to reject or modify the initial decision, the decision letter shall set forth in detail the specific reasons for the rejection or modification.

(4) Any respondent required to take action under the terms of the decision of the Agency shall do so promptly. The Chief, OCRC, may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(k) The time limit cited in paragraph (f) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 19760, May 31, 1988, as amended at 61 FR 2691, Jan. 29, 1996]

## PART 140—DEBT COLLECTION THROUGH OFFSET

Sec.

140.1 What does this part cover?

140.2 What is a debt and how can the SBA collect it through offset?

140.3 What rights do you have when SBA tries to collect a debt from you through offset?

**AUTHORITY:** 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 3716, Administrative offset; 15 U.S.C. 634(b)(6), Small Business Act.

**SOURCE:** 60 FR 62191, Dec. 5, 1995, unless otherwise noted.

**§ 140.1 What does this part cover?**

This part establishes procedures which SBA may use in the collection, through offset, of past-due debts owed to the Government. SBA's failure to comply with any provision of the regulations in this part is not available to any debtor as a defense against collection of the debt through judicial process.

**§ 140.2 What is a debt and how can the SBA collect it through offset?**

(a) A debt means an amount owed to the United States from loans made or guaranteed by the United States, and from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures, or any other source. You are a debtor if you owe an amount to the United States from any of these sources.

(b) SBA may collect past-due debts through offset by using any of three procedures: administrative offset, salary offset, or IRS tax refund offset. A past-due debt is one which has been reduced to judgment, has been accelerated, or has been due for at least 90 days.

(1) *Administrative offset.* SBA may withhold money it owes to the debtor in order to satisfy the debt. This procedure is an "administrative offset" and is authorized by 31 U.S.C. 3716.

(2) *Salary offset.* If the debtor is a federal employee (a civilian employee as defined by 5 U.S.C. 2105, an employee of the U.S. Postal Service or Postal Rate Commission, or a member of the Uniformed Services or Reserve of the Uniformed Services), SBA may deduct payments owed to SBA or another federal agency from the debtor's paycheck. This procedure is a "salary offset" and is authorized by 5 U.S.C. 5514.

(i) Any amount deducted from salary in any one pay period will not exceed 15 percent of a debtor's disposable pay, unless the debtor agrees in writing to a greater percentage.

(ii) SBA also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due the employee, including lump-sum payments.

(iii) If an employee has terminated employment after salary offset has

been initiated, there are no limitations on the amount that can be withheld or offset.

(3) *IRS tax refund offset.* SBA may request that IRS reduce a debtor's tax refund by the amount of the debt, as authorized by 31 U.S.C. 3720A. Where available, administrative and salary offsets must be used before collection is attempted through income tax offset. SBA may refer a debt to the IRS for a tax refund offset and take additional action against the debtor to collect the debt at the same time or in sequence. When SBA makes simultaneous or sequential referrals (within six months of the initial notice), only one review pursuant to the rules in this part and the statutes authorizing them is required.

**§ 140.3 What rights do you have when SBA tries to collect a debt from you through offset?**

(a) SBA must write to you and tell you that it proposes to collect the debt by reducing your federal paycheck, withholding money the Government owes you, and/or reducing your tax refund.

(b) In its written notice to you, SBA must tell you the nature and amount of the debt; that SBA will begin procedures to collect the debt through reduction of your federal paycheck, administrative offset, or reduction of your tax refund; that you have an opportunity to inspect and copy Government records relating to the debt at your expense; and that, before collection begins, you have an opportunity to agree with SBA on a schedule for repayment of your debt.

(c) SBA also must tell you that unless you respond within 60 days from the date of the notice, it will disclose to consumer reporting agencies (also known as credit bureaus or credit agencies) that you are responsible for the debt and the specific information it intends to disclose in order to establish your identity. The amount, status, history of the debt, and agency program under which it arose also will be disclosed.

(d) If you respond to SBA within 60 days from the date of the notice, SBA will not disclose the information to consumer reporting agencies until it

considers your response and determines that you owe a past-due, legally enforceable debt.

(e) Within 60 days of the notice you may present evidence that all or part of the debt is not past due or not legally enforceable.

(1) Where a salary offset or administrative offset is proposed, you will have the opportunity to present your evidence to SBA's Office of Hearings and Appeals ("OHA"). The rules in part 134 of this title govern the procedural rights to which you are entitled. In order to have a hearing before OHA, you must request a hearing within 15 days of receipt of the written notice described in this section. An OHA judge will issue a decision within 60 days of the date you filed your petition/request for a review or hearing with OHA, unless you were granted additional time within which to file your request for review.

(2) Where an income tax refund offset is proposed, you will have the opportunity to request a review and present your evidence to the appropriate SBA Commercial Loan Servicing Center at the address provided in the notice.

(f) SBA must consider any evidence you present and must first decide that a debt is past due and legally enforceable. A debt is legally enforceable if there is any forum, including a State or Federal Court or administrative agency, in which SBA's claim would not be barred on the date of offset. Non-judgment debts are enforceable for ten years; judgment debts are enforceable beyond ten years. You will be notified of SBA's decision at least 30 days before any offset deduction is made. You also will be notified of the amount, frequency, proposed beginning date, and duration of the deductions, as well as any obligation to pay interest, penalties, and administrative costs.

(g) If there is any substantial change in the status or amount of your debt, SBA will promptly report that change to each consumer reporting agency it originally contacted.

(h) SBA will obtain satisfactory assurances from each consumer reporting agency that the consumer reporting agency has complied with all federal laws relating to provision of consumer credit information.

(i) If your debt is being repaid by reduction of your income tax refund and you make any additional payments to SBA, SBA will notify the IRS of these payments and your new balance within 10 business days of receiving your payment.

(j) When the debt of a federal employee is reduced to court judgment, the employee is not entitled to further review by SBA, but is only entitled to notice of a proposed salary offset resulting from the judgment. The amount deducted may not exceed 15% of disposable pay, except when the deduction of a greater amount is necessary to completely collect the debt within the employee's remaining period of employment.

(k) When another federal agency asks SBA to offset a debt for it, SBA will not initiate the requested offset until it has received from the creditor agency a written certification that the debtor owes a debt, its amount, and that the provisions of all applicable statutes and regulations have been complied with fully.

(1) SBA may make an offset prior to completion of the procedures described in this part, if:

(1) Failure to make an offset would substantially prejudice the government's ability to collect the debt; and

(2) The time before the payment would otherwise be made to you does not reasonably permit the completion of the procedures.

(3) Such prior offset then must be followed by the completion of the procedures described in this part.

(m) Where an IRS tax refund offset is sought, SBA must follow the Department of the Treasury's regulations governing offset of a past-due, legally enforceable debt against tax overpayment.

## **PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS**

### **OVERVIEW AND DEFINITIONS**

- 142.1 Overview of regulations.
- 142.2 What kind of conduct will result in program fraud enforcement?
- 142.3 What is a claim?
- 142.4 What is a statement?
- 142.5 What is a false claim or statement?